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NORTH SHORE RAILWAY.

LEGAL PROCEEDINGS.

SEYMOUR *versus* McGREEVY.

AGREEMENT OF AUGUST 18TH 1875.

QUEBEC, 1876 & 1877.

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No.

MEMORANDUM OF LEGAL PROCEEDINGS,

Based upon Agreement dated August 18th, 1875,

CANADA,
PROVINCE AND DISTRICT } *In the Superior Court,*
OF QUEBEC.

No. 2329.

SILAS SEYMOUR, *Plaintiff.*

versus

HON. THOMAS MCGREEVY, *Defendant.*

MESSRS. TASCHEREAU & FORTIER,

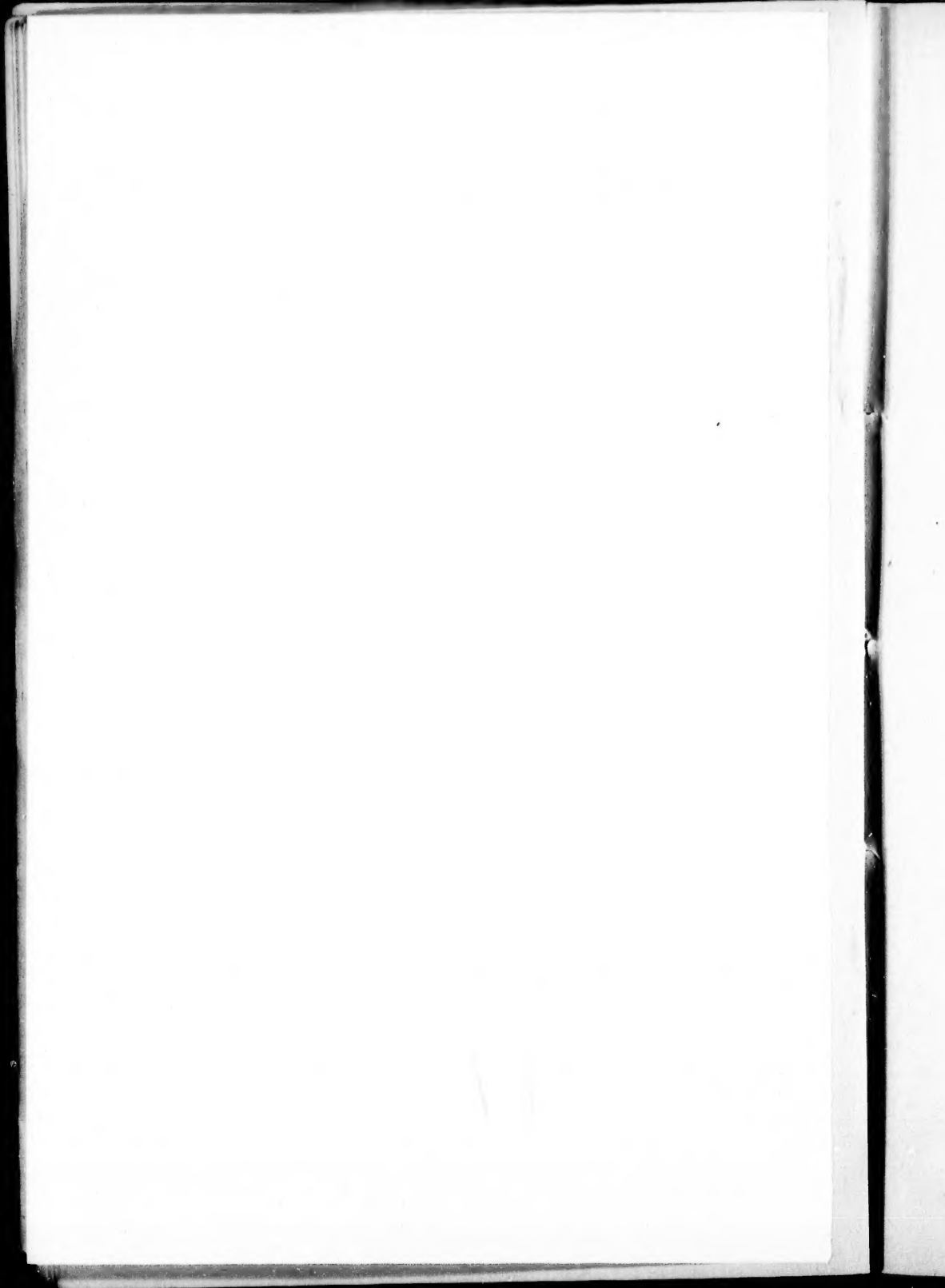
Attorneys for Plaintiff.

MR. R. ALLEYN, Q. C., COUNSEL.

MESSRS. ANDREWS, CARON & ANDREWS,

Attorneys for Defendant.

MR. C. G. HOLT, Q. C., COUNSEL.



PLAINTIFF'S DECLARATION.

The Plaintiff in the annexed Writ described, complains of the Defendant, also therein described, and represents :

That the Plaintiff is and has been for many years, a General Consulting Engineer, acting as such more especially in so far as relates to the construction and equipment of Railways, at Quebec and elsewhere.

That the Defendant was, from the twenty-first day of February, eighteen hundred and seventy-four, to the twenty-fourth day of September, eighteen hundred and seventy-five, the Contractor for the construction of the North Shore Railway, then being built and constructed by the North Shore Railway Company, a body politic and corporate.

That in the month of August last, the Defendant entered into negotiations with the Government of the Province of Quebec, with a view of obtaining from the said Government the contract for the building of the said North Shore Railway, on the basis of a cash consideration ; or of being relieved from the contract already entered into for the construction of the said Railway, which it was then expected would be taken in hand and built by the said Government.

That during the said negotiations, the said Defendant applied to the Plaintiff as General Consulting Engineer, as aforesaid, for his aid and assistance therein.

That on the twenty-fourth day of September last, the said negotiations ended, and a contract was entered into between the Government of the Province of Quebec and the Defendant, for the construction of the said North Shore Railway, for a cash consideration to be paid the Defendant for performing the contract therein mentioned; which contract was subsequently ratified and approved by the Legislature of the Province of Quebec, on the twenty-fourth day of December last; and the said Government authorized to carry out the same, and to build and construct the said road.

That during all the said negotiations, the said Defendant had the aid, assistance, counsel and advice of the Plaintiff, as General Consulting Engineer, as aforesaid; and that the Plaintiff rendered the Defendant many and important services in connection therewith, all of which enured to his profit and advantage.

That in consideration thereof, the said Defendant, by paper writing bearing date at Quebec, the eighteenth day of August last, promised and bound himself toward the Plaintiff as follows:

"In consideration for your extra services, (to wit: those above mentioned) I hereby agree that if I close an arrangement with the Provincial Government of Quebec, by which the Government either takes the North Shore Railway contract off my hands, or pays me a cash consideration for performing the contract, I will pay you five thousand dollars upon the closing of such an ar-

PLAINTIFF'S DECLARATION.

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"rangement, also five thousand dollars additional within
"one year from that date, and five thousand dollars addi-
"tional within two years from that date, making in all
"fifteen thousand dollars."

That in view of the premises, there is due by the De-
fendant to the Plaintiff, the sum of five thousand dollars,
being the amount payable upon the closing of the said
arrangement, which the Defendant refuses and neglects
to pay, though often thereunto required.

Wherefore, the Plaintiff prays judgment against the De-
fendant for the sum of five thousand dollars, with interest
and costs.

Quebec, 9th June 1876.

DEFENDANT'S ANSWER.

And the said Defendant, for answer unto the demand of the said Plaintiff, in the Declaration of the said Plaintiff in this cause fyled contained, not confessing nor acknowledging any of the matters or things in the said Declaration set forth and alleged to be true, save and except as hereinafter stated, by this his perpetual Exception *péremptoire en Droit*, saith that the said Plaintiff, by law, cannot at any time have or maintain any action against the said Defendant for or by reason of the matters and things in the said declaration set forth and alleged, or in of any or either of them.

For that during all the period during which the said Plaintiff in his said declaration alleges that he performed services for the said Defendant, he the said Plaintiff was the salaried officer of the North Shore Railway Company, to-wit: at a salary of five thousand dollars per annum, which salary was paid him during all the said period; and any matter or thing done or performed by the said Plaintiff during the said period, in relation to, or connection with the said North Shore Railway, or its construction, or in relation to the contract for the construction thereof, was so done and performed by him, the said Plaintiff, as such salaried officer of the said Company, and not for him the said Defendant, or in his the said Defendant's interest.

That the continuing by the said Plaintiff to hold the said office under the said Company, disqualified and prevented the said Plaintiff from rendering the said Defendant any services in connection with the said Railway, its construction, or the contract for its construction. And in fact the said Plaintiff, far from rendering the said Defendant such services, or in any manner advancing the interests of the said Defendant in the premises, acted adversely to the Defendant's interests, opposed the Defendant's wishes and desires in the matter, and purposely injured the said Defendant, both by his words and deeds, in connection with the said Railway, and with the Defendant's negotiations with the Government of this Province; and generally in all matters in relation to the Defendant's contract for the construction of the said Road, and the ratification by the House and Legislature of this Province, of the contract between the said Defendant and the Government.

That the said Plaintiff never performed any of the services contemplated or alluded to in the paper-writing, or missive in his said declaration referred to, or attempted, or was willing to perform the same or any of them.

Wherefore the said Defendant prays the dismissal of the Plaintiff's action in this behalf, with costs.

And the said Defendant, for further plea to the said action, and without waiver of the foregoing, saith: That the said Plaintiff, deceitfully pretending that he had rendered him, the said Defendant, assistance and services, which in fact he had not rendered; and concealing from him the fact that he had on the contrary, acted adversely to his the Defendant's interest, obtained from the Defendant a sum of two hundred dollars, paid by him, the Defendant

to J. G. Colston, Esquire, Advocate, at the request and upon the written order of him the said Plaintiff; and also obtained from him, the said Defendant, his the Defendant's two negotiable notes, dated at Quebec, the first of May, eighteen hundred and seventy-six, for the sum of twelve hundred dollars each, and payable, respectively, three and four months after their said date; and which said notes, he the Plaintiff has negotiated and received the proceeds of; and he the said Plaintiff has also had and received of the money of the said Defendant, paid to him by the Government of this Province, between the first day of November last, and the first day of May last, as salary as Consulting Engineer, a further sum of two thousand five hundred dollars, which sum he the said Plaintiff was not entitled to, and did not earn; inasmuch as the said Plaintiff did not render the said Defendant any services during the said period, and was not in his employ during the said time; and he the said Defendant is entitled to set up in compensation, and doth hereby set up in compensation the said several sums, against any demand which the said Plaintiff may legally have or prove against him, the said Defendant, for or by reason of any of the matters or things in his said declaration referred to; and the said demand hath thereby become and is paid, and satisfied, and discharged.

Wherefore the said Defendant humbly prays that for the causes aforesaid, by the Judgment of this Honorable Court, the said compensation be declared, and the action of the said Plaintiff, in this behalf, be hence dismissed with costs.

Quebec, July 6, 1876.

ADMISSIONS BY DEFENDANT.

See answers to Articulation of Facts.

1. That Defendant was, from February 21st 1874, to September 24th 1875, the Contractor for the construction of the North Shore Railway, under the Railway Company.

2. That in August 1875, Defendant entered into negotiations with Government, with a view of obtaining a contract for building the North Shore Railway, on the basis of a cash consideration.

3. That on the 24th September 1875, the said negotiations ended, and a contract was entered into between the Government and the Defendant, for the construction of the said North Shore Railway, for a cash consideration to be paid the Defendant for performing the Contract.

4. That the said Contract was subsequently ratified and approved by the Legislature of the Province of Quebec, on the 24th December last.

See answers to Faits et Articles.

5. That Defendant had communications with the Plaintiff, as *General Consulting Engineer*, during all said negotiations, concerning documents which the Plaintiff stated

that the Treasurer of the Province had put into his, the Plaintiff's hands, to prepare a contract with the Government, and assist him, the Treasurer, in making a contract. That was in the month of August.

6. That Defendant signed a document, bearing date at Quebec, August 18th 1875, by which he promised and bound himself towards the Plaintiff, as follows :

"In consideration for your extra services, I hereby agree, that if I close an arrangement with the Provincial Government of Quebec, by which the Government either takes the North Shore Railway Contract off my hands, or pays me a cash consideration for performing the contract I will pay you five thousand dollars upon the closing of such an arrangement ; also five thousand dollars additional within one year from that date ; and five thousand dollars additional within two years from that date ; making in all fifteen thousand dollars." And that, upon being shewn the document referred to, Defendant acknowledged that it was signed by himself.

See testimony of Hon. Thos. McGreevy.

7. That subsequent to signing the above letter, the Defendant closed an arrangement with the Provincial Government.

8. That during the progress of Defendant's negotiations with the Government, he had communication on several occasions with the Plaintiff, and saw him several times about the preparing of the contract, or a draft of the contract. Also, that Plaintiff wrote Defendant on several occasions. Also, that Defendant may have kept some of these letters ; and some he may not have kept.

9. That upon being called upon to produce these letters, Defendant produces original letters signed by Plaintiff, of the following dates : Sept. 23, 1875—Feb. 4, 1876—Feb. 18, 1876—April 10, 1876—April 26, 1876—May 2, 1876—May 4, 1876, and May 6, 1876,—admitted copies of all which were filed as Plaintiff's Exhibits A. B. C. D. E. F. G. and H. respectively.

10. That Defendant was always desirous of obtaining responsible parties to advance the means in the carrying out of said contract : (to-wit the original contract with the Railway Company). Also, that Defendant did enter into arrangements with Plaintiff to that effect, through the Hon. Mr. Irvine.

11. That, in August and September 1875, the Defendant had occasion to have several interviews with the Plaintiff with reference to the proposed new arrangement about to be entered into for the construction of the North Shore Railway by the Government. Also, that during this time, there were frequent negotiations carried on between the Defendant and the Government, to come to an understanding in the matter. One of the principal objects was, that the Government should undertake the construction of the Road, instead of the Railway Company. And another principal object was, to substitute a cash basis for payments, in lieu of Railway Bonds and subsidies.

12. That Defendant was told by the Plaintiff, that the Treasurer of the Province had called on him (the Plaintiff) to assist him (the Treasurer), in preparing the draft of Contract, Schedules and Estimates.

13. That Defendant was very desirous that the thing, (to-wit, the preparation of the Contract, Schedules and

Estimates) should be put through as soon as possible, and that there should be no delay.

14. That Defendant signed an agreement, during these interviews, with the Plaintiff, upon which this action is based, *in order that there should be no delays, as before stated; knowing that the Plaintiff had the means in his power of keeping it back; which (to-wit, the signing of the agreement) the Defendant would not have done under any other circumstances; It was not signed for services rendered, and only for the reason above mentioned.*

15. (Tacitly.) That after signing the said agreement, the Defendant had a conversation with the Plaintiff respecting the then existing state of Defendant's negotiations with the Government, concerning the said contract; and that amongst other things, Defendant declared to Plaintiff, that there was a difference between Defendant and the Government of some four hundred and fifty thousand dollars, respecting the consideration of the main Line alone.

(Direct.) The Defendant cannot state the exact amount, but there was always a difference between the Government and the Defendant.

16. That Defendant's interviews with the Plaintiff were chiefly at the Plaintiff's office; but Plaintiff may have sometimes come to Defendant's house.

17. That Defendant believes the contract was supposed to be ready about the last days of August; but the Government thought proper to delay it until the 24th of September. *And Defendant also believes the delay was with the Government.*

18. That Defendant dont think that, between the 18th of August, and the 24th September 1875, the Plaintiff ren-

dered services towards the facilitating and bringing about the new contract above referred to, *for the reason that, all Defendant knew Plaintiff to do, was considerably altered and changed* by another Engineer whom the Government employed to take charge, that was Mr. Light; *And the contract as drawn out by the Plaintiff, was completely changed.* (The foregoing contains the important admission that the Plaintiff prepared a contract, in pursuance of the "Extra services" which the Defendant admits were contemplated by the agreement of August 18th 1875.)

19. That Defendant might have met the Plaintiff, and have examined, at Defendant's house or elsewhere, the draft of a new contract, before Defendant signed it. Also that the Plaintiff may have made suggestions, to the Defendant with respect to alterations or additions to be made for Defendant's protection or interest, in the draft of the new contract, before it was signed, other than those mentioned in Plaintiff's letter of September 13, 1875. *Also, that at the last moment, a cash consideration was substituted by the Government in lieu of the \$125,000 subscribed by the municipalities—(referred to in said letter.)*

20. That Defendant may have answered some of Plaintiff's letters, but he kept no copy of them. Also, that Defendant may have met the Plaintiff, near the Montreal Bank, last February; and may have had a conversation with him about the subject matter of this cause; and Defendant may have stated to Plaintiff that he was going to make a settlement with him. *Also, that Defendant may have stated to Plaintiff that he intended to call on Plaintiff; and Defendant believes he did so state, and give Plaintiff a sum of money; but Defendant cannot say the amount. Also*

that Defendant intended to have given the Plaintiff such sum of money, in consideration of the arrangement made with Plaintiff—(to-wit, the agreement of August 18, 1875.)

21. (Tacitly.) That Defendant was aware that, pending the negotiations which led to the execution of the contract, on the 24th of September of last year, the Plaintiff had Parties willing to assume an interest in the then existing contract for the building of the road. (Direct.) *Negotiations were kept in abeyance with certain parties during that time. Also, that Defendant remembers, as one of the parties to whom he refers, the name of Mr. Aiken, the person mentioned in the declaration in the other cause. Also, that Defendant signed the letter addressed to the Plaintiff (dated Quebec, 22nd July, 1875,) marked Plaintiff's Exhibit L, at Enquete. Also, that Defendant believes he had an interview with the Plaintiff and Aiken. Also, that Defendant wrote, signed, and sent to the Plaintiff, Exhibits at Enquete, I. J. M. & N. (Being letters dated respectively, April 17th, 1876—May 1st, 1876—May 4, 1876, and one other.*

22. That Defendant was aware, that in June last, 1875, the Plaintiff was a Consulting Engineer to the North Shore Railway Company, at a salary of five thousand dollars a year, which Defendant paid, by virtue of his contract with the Company. *Also, that Defendant knows that Plaintiff had a sign on his office door, as "General Consulting Engineer."*

FACTS PROVEN BY PLAINTIFF.

See testimony of Hon. George Irvine.

1. That in 1871. Plaintiff had an office in New York City, as an Engineer, following his profession; and that he was then and there consulted respecting the North Shore Railway.

2. That Plaintiff came to Canada soon after that date, and was engaged as Consulting, and acting Chief Engineer upon the North Shore Railway.

See testimony of Mr. A. H. Verret.

3. That Plaintiff acted as Chief Engineer of the North Shore Railway Company, from 1871, up to May 1st 1875; when he resigned as such, remaining as Consulting Engineer of the Company.

4. That after Plaintiff's resignation as Chief Engineer, he changed the Sign on his office door, and substituted thereto the following: "General Consulting Engineer."

5. That witness often met the Defendant at his office, (to wit the N. S. R. Office) and had conversation with Defendant; and always understood from the conversation, that the Defendant was on good terms with the Plaintiff.

And that Plaintiff was assisting Defendant to prepare figures and estimates for the Contract in question. Also that witness saw the Defendant coming down the stairs which led to Plaintiff's office. Also that Plaintiff's office was on the flat above witness' office.

See testimony of Hon. A. R. Angers.

6. That, between August 18th, and September 24th, 1875, at the request of the Plaintiff, and as a personal favor, the then Solicitor General of the Province of Quebec, being also a member of the Provincial Government, let the Plaintiff see the draft of the proposed Contract with the Defendant; and also that the Plaintiff afterwards returned the same to the Solicitor General, with a written communication.

7. That the Plaintiff also sent to the Solicitor General, a letter accompanying said communication, of which letter the Solicitor General believes Plaintiff's "exhibit Z," to be a true copy.

8. That the Plaintiff's "exhibit T" at Enquête, (to wit: *Remarks of the Consulting Engineer upon the form of Contract*), is the communication in question.

See testimony of Mr. A. L.^a Light.

9. That the Government Engineer (Mr. Light) was not present in Quebec, during the negotiations between the Government and Defendant, until *after the 29th August*. And that, after that date, he, the Government Engineer

was present in Quebec during the negotiations which resulted in a Contract between the Government and the Defendant for the construction of the North Shore Railway upon a cash basis.

10. That after that date, the Government Engineer took an active part in these negotiations, and the preparation of the Contract, Specifications, Estimates and Schedules which form part thereof, or are referred to therein.

11. That the document shewn to the Government Engineer, marked Plaintiff's Exhibit "A. A." at Enquête, (to wit: *Points to be considered in adjusting the existing Contract to a cash basis, &c.*), is in the hand-writing of the Plaintiff. Also that many of the points herein expressed are embraced in the present Government Contract. Also that the Government Engineer saw many of these points embodied in the rough draft of the Government Contract in the hand-writing, and in the office of the then Attorney General Church. Also that the Government Engineer examined, together with other papers having reference to the matter, with Mr. Church, and Mr. Angers, the present Attorney General. Also, that there was one document signed by the Plaintiff, and in the hand-writing of his son. It was a draft of a new Schedule; and a copy of Plaintiff's Exhibit "B. B." at Enquête.

12. That the Government Engineer is aware, that by the insertion in the Contract, of point or clause "12" (as contained in Exhibit marked A. A.) the Contractor, (the Defendant) has benefitted to the extent, at present, of some \$5,000, in consequence of a change of location for about $\frac{1}{2}$ of a mile, near Portneuf. And it is at present an open question, whether there shall be other changes.

MEMORANDUM,

Showing the identity or similarity of certain paragraphs or conditions, as contained in Plaintiff's "Exhibit A A," in Plaintiff's hand-writing, referred to in Mr. Light's testimony; (being "*Points to be considered in adjusting the existing Contract to a cash basis, &c.,*") and those contained in the present Government Contract; and demonstrating also that the Contract was prepared chiefly from Memoranda furnished by Plaintiff.

Extracts from Points, &c.

"1. The existing Contract and Specifications, together with Circular No. 2, dated June 12, 1874, to remain in full force and effect, except as hereafter changed or modified."

"3. Steel rails of the best quality and pattern, weighing 56 lbs. per lineal yard, to be used for the main through track.—The switches and sidings to remain of iron of the same weight and pattern."

Extracts from Contract.

"The said Hon. Thos. McGreevy hereby undertakes, binds and obliges himself toward the said party of the second part, to do and perform all the obligations, and to execute all the works which under the aforesaid Contract of date the 21st of Feb., 1874, he was bound to do and perform to and in favor of the said Company, subject however to the requirements of a certain circular called Circular No 2, dated the 12th of June, 1874, signed Silas Seymour, and hereunto annexed to form part of the presents."

"The party of the first part covenants and agrees to use and employ steel rails of the best quality and pattern, weighing 56 pounds per lineal yard for the main through track, the switches and sidings to remain of iron of the same weight and pattern."

" 4. Iron truss bridges of the best quality, and most approved plans, to be adopted for the crossing of the St.-Annes, Batiscan, St.-Maurice, and Ottawa Rivers. — All other bridges to remain of wood."

" 5. All changes in grades, plans, &c., to be made by the Contractor, in conformity with Government requirements."

" 6. The Contractor to pay for the entire right of way."

" 7. The plans and detailed specifications of the different works, structures, buildings, and equipments, to be approved by the Government Engineer. And all work and materials will be subjected to his inspection and approval, before being accepted and paid for by the Government."

" 8. The Main Line to be fully completed and equipped to the satisfaction of the Government on or before the..."

" 9. The entire consideration for the Main Line to be \$4,266,000."

" 10. A revised Schedule of quantities and prices, to be prepared, subject to the approval of the Government and the Contractor, which being computed at proper relative rates, shall

" The party of the first part covenants and agrees also to build iron truss bridges of the best quality, and most approved plans, for the crossing of the Ste-Annes, Batiscan, St.-Maurice, and Ottawa Rivers. All other bridges to remain of wood."

" The party of the first part hereby covenants and agrees to make all changes in grades, plans, specifications, and otherwise, in conformity with the Government requirements."

" Notwithstanding anything in any one of the Contracts hereinbefore referred to, the said Contractor shall be bound to furnish, at his own proper cost and charges, any and all grounds necessary and required, in the opinion of the Government Engineer and Commissioners, for the service of the said Railway."

" And it is fully understood and agreed by and between both parties hereto, that the profiles, plans, working drawings, and detailed specifications of the different works, structures, buildings and equipments, shall be made by the said Contractor, and fully approved by the Government Engineer, before work is begun upon them. And that all work and materials shall be subject to his inspection and approval before being accepted and paid for by the Government."

" That the whole line of the Main Road and Piles Branch, with all the buildings, rolling stock, snow fences, &c., steamboat, &c., as referred to in the above recited Contracts and herein, shall be fully completed and delivered in first class order, so as to be accepted by the Government, on or before the 1st day of December, 1877."

NOTE.—The consideration named in the Contract is \$4,732,387 50, which includes Main Line, Piles Branch, and \$50,000 for debts of Company.

" That as to the manner of settling for work already done, on the said line, the amount thereof shall be ascertained by the Government Engineer, its value shall be paid by the

aggregate the sum of \$4,266,000 (for the Main Line), upon which Schedule an estimate of the work already done, materials procured, and expenditures incurred shall be based.—And payment shall be made therefor in cash, upon the certificate of the Government Engineer, after deducting the amount received by the Contractor on account thereof from the Railway Company, together with — per cent, which shall be retained as security for the full and faithful performance of the Contract."

" 11. Monthly payments, based upon the same schedule, to be made upon future progress estimates, as certified by the Government Engineer, on or before the 10th of each month, from which the same percentage shall be deducted, until the total amount of said percentage shall reach the sum of \$

" 12. If the location of any portion of the line shall be changed—or if the length of the road required to be constructed shall be either greater or less than the distance of 158 miles now contemplated and provided for, the increased or diminished cost resulting from such changes, as compared with the cost of the present line, will be computed at the same schedule rates above provided for; and the total consideration will be adjusted accordingly, by either increasing or diminishing the amount, as the case may be."

Schedule of prices hereunto annexed marked "B," bearing date 1st September; and the gross sum thus ascertained, after deducting drawback herein-after mentioned, and the amounts already paid, the balance shall be paid to the said party of the first part."

" And as to the manner of settling for the work to be done hereafter by the contractor, it shall be done as follows: Monthly estimates of the quantities thereof, and of the materials which are *bond fide* in possession of the contractor on the said Railway, shall be made by the Government Engineer under the said schedule by him prepared marked "B," and hereto annexed, and the amount thereof paid on or before the 15th day of the succeeding month, less such deductions as are stipulated for under this contract, as a draw-back for the due and ultimate fulfilment of the said work."

" That ten per cent of each monthly progress estimate shall be retained by the Government as security for the due fulfilment of contract by the said contractor; and when the amount so kept back shall amount to, at least \$100,000, five per cent on each monthly estimate thereafter may be retained till the final completion of the contract in all its parts, and the acceptance thereof by the Government."

" It is further agreed and understood that in case any alterations are made in the location of the line or road, or in the construction of such part thereof, which will increase the cost of (to) the said contractor either in grading, bridging, or length of line, &c., &c., the said contractor shall be paid such additional cost *pro rata* with the schedule then in force, and at prices mentioned therein; and in case of any decrease in the cost of construction consequent on any such change of line, a corresponding deduction shall be made by the said contractor, as per schedule rates."

" 13. If, upon the perfection of the plans, and the computation of the final quantities, it shall be found, during the progress of the work, that there are material defects or omissions, in the Schedule herein provided for, said Schedule may be revised and perfected,—but in no event shall the total amount thereof be greater or less than the sum of \$4,266,000, for the full and final completion of the Main Line, as now located, and herein contemplated to be done."

" 15. If the Contractor refuses or neglects to meet, within a reasonable time, any of the obligations or payments which he has assumed under this agreement. Or if he delays, for an unreasonable length of time, the payment for labor performed, or materials purchased for, or in connection with the work, the Government to have the power to make such payments, and to deduct the amount from the Contractor's Estimates."

" 16. If the Contractor fails to prosecute the work in a proper manner, or at a rate or progress that will ensure its completion within the time specified, the Government to have the power to cancel the Contract, and to enter into other arrangements for its completion."

" It is further understood and agreed that the Government Engineer may change the Schedule ~~rates~~ of prices, if found necessary, to secure the full completion of the Road; or in case the Schedule already made bear too hard upon the Contractor; subject however to the approval and ratification of the Lieutenant-Governor in Council; but in no case shall the cost of the Road exceed the gross price hereinafter mentioned."

" It is further agreed and understood, that if the Contractor refuses or neglects to meet within a reasonable time, any of the obligations or payments which he has assumed under these presents; or if he delays for an unreasonable length of time, the payment for labor performed or materials purchased for in connection with the Road, then and in any of said cases, the Government shall have the power to make such payments, and to deduct the amount thereof from the said Contractor's Estimates."

" Or that, if the contractor fails to prosecute the said work in a proper manner, or at a rate of progress that will ensure its completion within the time specified, that then, and in any of said cases, the Government shall have power to cancel the whole contract, and to enter into other arrangements for its completion."

It will be seen from the above, that all the *Points* as suggested by the Plaintiff, are directly covered by the *Contract*, except the "2d," which is provided for in the "12th"; and also the "14th," which refers to a *sub-schedule*, and is really provided for in the "10th" and "11th."

The language and terms used, are also generally *identical*, except where amplifications are introduced for the purpose of adapting the ideas to the ordinary and more formal terms of the contract.

TESTIMONY FOR DEFENCE.

See testimony of Mr Charles Odell.

1. That witness is in the employ of the Defendant since the summer of 1874, as his Engineer in Chief, in connection with the North Shore Railway; and had a knowledge of the last contract entered into with the Provincial Government; and was engaged in the preparation of the details of that contract before it was drawn out and signed; and the witness' office, and the professional skill which it contained, were quite sufficient for the purpose of getting up all the estimates and details with reference to that contract.

2. That subsequently to the 1st of May 1875, the Plaintiff was the Consulting Engineer of the North Shore Railway Company; but witness had no communication with the Plaintiff as such Consulting Engineer.

3. That witness is certainly of the opinion that the Defendant could obtain from witness, as Engineer, all the information he might require in relation to his contract, without the services of the Plaintiff.

4. That upon being shown Plaintiff's Exhibit "A A" at Enquete (to wit, "*Points to be considered in adjusting the*

existing contract to a cash basis.") Witness believes that he saw a copy of the same in the office of the Defendant.

5. That witness' attention has been drawn to *clause twelve* (of said Exhibit); and it seems to him to be a clause which works both ways, and does not protect one party of the contract more than it does the other; and as to the rest of the contract, it is rather binding on the Contractor, and the Government has the best of it.

Cross-Examined by Plaintiff.

6. That witness saw the copy of that Document this morning in the Defendant's office; and witness thinks it was not in the hand-writing as that of Plaintiff's Exhibit "A. A." It was the Defendant himself who showed witness that copy, which witness has examined, and believes to be a true copy of that Exhibit, which he has also examined.

7. That the nature of the information given by witness to Defendant, and which were subsequently embodied in the contract, or used as a basis, is as follows: as to the quantity of Earth and Rock work, and the general clearing, grubbing, foundations, masonry of different classes, track-laying and ballasting, and general equipments of the Road.

8. That in obtaining the above informations, the witness took as a basis, quantities and items from the original schedules which were furnished by the Chief Engineer of the Company, under the old contract; and to this, witness added and estimated the different quantities of the different classes of work required to bring it up to the standard as suggested, or called for by the Government Engineer.

9. That upon referring to *clause five*, in the said Exhibit "A, A," witness is of opinion that if said clause being embodied in the contract, and *clause twelve* being left out, the Contractor would not be entitled to an advance, supposing the work increased, neither would anything be deducted supposing it was diminished.

10. That witness is not aware at present of the Contractor having as yet received any advance. There has been a change in location which may probably increase the work, to what extent witness cannot say.

Re-Examined by Defendant.

11. That, under *clause twelve*, if the works are increased, the Contractor is entitled to be paid therefor; and if the works are diminished, a proportionate reduction, as the witness has already stated.

See testimony of Mr. John T. Prince.

12. That witness is in the service of the Defendant as Cashier and Accountant, since January 1874, and is aware that Defendant was and is the Contractor for the building of the North Shore Railway; also that the Plaintiff was the acting Chief Engineer for the Company, during the whole time of witness' residence here, up to the beginning of the year 1875, at a salary of ten thousand dollars per annum, which was paid by the Contractor, through the witness, as his Cashier. After the Plaintiff ceased to be the Chief Engineer of the Company, he continued to be the Consulting Engineer, at a salary of five thousand dollars, also paid by the Contractor.

13. That witness is aware that, during this period, the Defendant had a Chief Engineer, that is to say Mr. Charles Odell, the witness examined in this case.

Cross-Examined by Plaintiff.

14. Witness cannot say by whom was paid the salary of the Plaintiff, of five thousand dollars, as Consulting Engineer; but witness knows the money came from Mr. McGreevy, but the Plaintiff was paid at the Company's office; witness knows that, because it was afterwards charged to us by the Company.

See testimony of Mr. Thomas J. Rusk.

15. That witness has been following his profession as a Civil Engineer since the year 1854; and has been engaged continually during all that time, in that capacity, in the construction of Railways, in Europe, Africa, the United States, and in this Dominion.

16. That the duties of a Civil Engineer in these matters are: first the location of the line, fixing the proper grades for the Road-bed, proper drainage, to see that the road is properly constructed, both in regard to the earth-work or rock-work, masonry and superstructure for bridges; as also the building of the Depots, shops, &c.; and of course in regard to rolling-stock; of course his duty is also to make out the proper specifications, and prepare the necessary estimates of work done and material delivered for the construction of the Road.

17. That the witness has particularly examined the Plaintiff's Exhibits "A. A." "B. B." and "T," at Enquete.

The first of these Exhibits contains the Rules for the construction of a first class Railway, generally used on the construction of most Roads. "B. B." is a schedule of prices; and "T" seems to contain some amendments to the first paper, and some other matters that witness is not particularly acquainted with.

18. That it appears to witness, that some of the clauses of these documents are pretty strong in favor of the Government, and against the Contractor. Witness especially refers to *clause seven* in Exhibit "T" as a most arbitrary rule not known to him as having been used on any Railroad with which he has been connected.

19. That the work and materials, and contents of the said Documents or Exhibits, three in number, are within the ordinary duty of a Railway Engineer.

Cross-Examined by Plaintiff.

20. That, since three weeks after witness arrived in Quebec, about four months ago, he has been in the employ of the Defendant as Chief Draughtsman; and that yesterday the Defendant shewed witness the Exhibits spoken of in his Examination in Chief; and told him to read them through, and make up his mind as to the contents of the said papers, for the purpose of giving evidence, witness presumes in this case.

21. That witness has worked, both as Engineer of a Railway Company, and as Engineer of a Contractor or Contractors. When witness worked as Engineer under a Contractor, the Contractor had not the control of the Engineers and Engineers Department of the Road, except in one instance, when he worked for Messrs Peto, Bras

sey and Betts, who had full control. In the other instances it was the Railway Companies that had the control of the Engineers, and Engineering Department; as the Contractors had work and were paid by the yard for masonry, earth or rock-work, &c., &c., which is entirely different from the system used on the North Shore Railway, which Road is contracted for a bulk sum.

22. That witness knows nothing about the contract which existed between the Defendant and the old North Shore Railway Company; nor does he know any thing about the existing contract between the Government and the Defendant. All that witness knows is what is contained in the Exhibits "A. A." "B. B." and "T," part of which he presumes is embodied in the present contract.

23. That when the witness was acting as Consulting Engineer on a Railway, had the Contractor referred to witness for papers such as Exhibits "A. A." "B. B." and "T," the witness would have been bound to furnish papers of that kind, demanded by the Company; and at the request of the Company only.

PLAINTIFF'S EVIDENCE IN REBUTTAL.

See testimony of Mr. J. A. Charlebois, Notary.

1. That the two Contracts filed at Enquete, Nos. "23," and "24," are true copies of the original contracts executed before witness as Notary; the first, between the North Shore Railway Company and the Chicago Contracting Company; and the other between the Defendant and the North Shore Railway Company.

See testimony of Mr. Philippe Huot, Notary.

2. That it was the witness who passed the contract between the Defendant and the Provincial Government, on the 24th of September of last year. A duly certified and authentic copy thereof is to be found filed in this cause, in Plaintiff's Exhibit at Enquete "O."

See testimony of Mr. A. H. Verret, Secretary.

3. That the witness was Secretary Treasurer, of the North Shore Railway Company, during its existence.

4. That tl. Plaintiff's Exhibit "No. 22," at Enquête, is a true copy of Resolution passed by said Company, on the 11th of August 1875, (to wit, the Resolution "declaring the inability of the Company to construct the road under the existing arrangements;" and that "the Company are therefore ready to allow the Government to deal with the question in any way they may in the public interests think proper, making such arrangements with the Contractor as may be found necessary.")

5. That under the terms of the contract between the Railway Company and the Defendant, the latter was bound to pay all expenses connected with the Engineering Department, as per Schedule; and the Defendant furnished the Company with the vouchers connected with such payments. They were entered in the Monthly Estimates and repaid him by the Company. This sum of course included the salary of the Consulting Engineer, for his regular services as such.

6. That in August and September 1875, the witness is not aware that the Company called on the Plaintiff for the information contained in Plaintiff's Exhibits "A. A." "B. B." and "T" at Enquete; nor indeed does witness believe that the Company took any step or action whatever, after the 11th of August of said year, with respect to the construction of the said road. Everything was at a standstill, waiting for the action of the Government.

6. That, after examining said Exhibits "A. A." "B. B." and "T," the witness does not believe that, in the said month of August, it was proper, or necessary, or the duty of the Plaintiff, in his quality of Consulting Engineer of the said Company, to furnish the information therein con-

tained, to the Defendant, (the Contractor) unless he were ordered to do so by the Company. It would be necessary if he were ordered to do so. It was not in witness opinion part of his (Plaintiff's) duty, as Consulting Engineer of the Company, to furnish such information to the Contractor.

Cross-Examined by Defendant.

7. That witness filled no other office than that of Secretary Treasurer of the Company; and it was no part of his duty to direct the operations of any of the other officers of the Company. He performed the general duties of a Secretary. Witness has no personal knowledge as to the officer or person to whom the Plaintiff first communicated the papers above referred to; nor at whose request they were prepared.

Re-Examined by Plaintiff.

8. That witness may state generally, that all work to be performed by the Plaintiff, in connection with the road, was notified to him by witness, as Secretary, by order of the President, or of the Board.

See testimony of Mr. A. L. Light, Government Engineer.

9. That the witness has already been examined as a witness in this cause.

10. That, after examining Plaintiff's Exhibits at Enquete "A. A." "B. B." and "T," the witness states that, with reference to the information therein contained, there would have been no impropriety, on the part of the Plaintiff, in furnishing the Defendant, in August 1875, with said information, supposing the Plaintiff had furnished the same to the Defendant.

11. That, as Consulting Engineer of the Company, it would not have been necessary for the Plaintiff to have done so (to wit, to have furnished said information to the Defendant) without receiving any order to that effect from the Company.

12. That it was not the duty of the Plaintiff, in his quality of Consulting Engineer of the Company, and acting as such, to furnish the Contractor (to wit, the Defendant), at his request, with the information contained in the said Exhibits.

13. That, upon comparing Clause No. 7 of Plaintiff's Exhibit "T," with Clause No. 2 of the contract between the Defendant, and the Provincial Government, both of which apply to the appointment of Engineers and Inspectors, (the said clause No. 2 to be found at page 115 of Plaintiff's Exhibit "O,") witness states that the conditions contained in the said contract, are more stringent and binding upon the Contractor, than the terms contained in said Exhibit "T."

See testimony of Hon. J. G. Robertson.

14. That, in 1875, the witness was Provincial Treasurer, and a Member of the Government of the Province of Quebec.

15. That, in July and August of that year, witness is aware that negotiations were being carried on between the Government, and the Defendant in this cause, for the passing of a contract for the construction of the North Shore Railway, which the Defendant had previously contracted to build with the North Shore Railway Company.

16. That, owing to the proposed relinquishing, by the

said Company, of its charter, it became necessary then to have a new contract entered into for the construction of the Road.

17. That it was the witness, who represented the Government, in carrying on said negotiations.

18. That witness communicated with the Plaintiff, for the purpose of obtaining a statement of quantities and kinds of materials which enter into the construction of a Railway; and the Plaintiff furnished witness with the details and information which witness required.

19. That witness addressed the Plaintiff in the matter, because witness thought Plaintiff had more information concerning it than any one else.

20. That witness found the information thus procured, of very great service, as it enabled witness to arrive at what would be, in witness' opinion, a fair value to offer for the work.

21. That in so far as it was of use to witness, the information received by the Plaintiff certainly facilitated matters, and helped to the execution of the negotiations which ended in the contract.

22. That witness is under the impression that he received a document similar to Plaintiff's Exhibit "A. A." at Enquete, pending the negotiations, from the Plaintiff; witness certainly received the same suggestions in writing from the Plaintiff.

23. That witness knows that Mr. Light, the then Government Engineer, was absent from Quebec, during a portion of the time when negotiations were going on respecting the Railway; and when Mr. Light returned to Quebec, the basis of the contract in question was mostly completed.

REVIEW OF THE CASE.

IN PEHALF OF THE PLAINTIFF.

In submitting the following *Review* of the Case, it is proposed to consider it with reference to its *Equitable*, as well as to its *Legal* aspects.

THE EQUITY OF THE CASE.

In remarking upon this aspect of the Case, it is proper to consider, first, the relative position of the respective parties, both previous to, and at the date of the special Agreement of August 18th 1875, which forms the basis of this suit; and, second, the position in which the same parties would necessarily be placed, upon the consummation of the contingency which was contemplated, and evidently intended to be provided for by the same Agreement.

It appears that the Plaintiff, who had for many years occupied a prominent position in his profession, as a Railway Engineer, was applied to by the representatives of the

North Shore Railway Company, at his office, in New York, in the year 1871; and then and there consulted respecting the North Shore Railway; and that soon after that date, he came to Canada and was engaged as Consulting, and Acting Chief Engineer upon the said Railway; both of which positions he held, at a salary of \$10,000 per annum, until May 1st 1875, when he resigned the position of *Acting Chief Engineer*, and retained that of the *Consulting Engineer* of the Railway Company, at the reduced salary of \$5,000 per annum.

It also appears, that after the Plaintiff's resignation as Chief Engineer, he changed the Sign upon his office door, to that of "*General Consulting Engineer*," and thus gave *special*, as well as *public* notice to all persons who either *passed* or *entered* that door, that he was open and prepared to be *consulted*, *generally*, in relation to any and all matters pertaining to, or connected with his profession.

The expediency, as well as the propriety of giving such notice, on the part of the Plaintiff, will become apparent, when it is considered that, up to May 1st 1875, he had been receiving from the North Shore Railway Company, a salary of \$10,000 per year, which amount had been mutually agreed upon by and between the parties, *as representing a fair and just Equivalent*, for the devotion of the Plaintiffs entire time and professional services, in the above *dual* capacity, to the interests of that Company. Whereas, after May 1st 1875, the salary of the Plaintiff was reduced to \$5,000 per year; which amount was supposed to represent an equivalent for the proportion, say one half, of the Plaintiff's time and professional services, *as Consulting Engineer only*, which he would be liable, if

so required by the Railway Company, to devote to the service and interests of that Company. And the Plaintiff was therefore at full liberty to seek for, and to enter into other professional engagements, in order to make good the deficit, of \$5,000, in his yearly income.

It also appears, that the Contract which was in force between the Railway Company and the Defendant, during the period above referred to, for the Construction and Equipment of the North Shore Railway, (*See Plaintiff's Exhibits Nos. 23 and 24.*) contained a provision by which the Contractor agreed and undertook to pay "all the expenses connected with Engineering." And also a further provision, that these expenses, together with those of the Railway Company, and all other expenses which were legitimately connected with the Construction and Equipment of the Railway, should be *re-paid to the Contractor by the Railway Company*, upon the Monthly or progress Estimates of the Engineer; which Estimates were to be based upon a Schedule of Values, for the different items of Expenditure under the Contract, which schedule would aggregate the total consideration named in the contract, for the completion of the Railway. But the said contract contained no provision by which any of the Engineers named or referred to therein, *were* under the control of, or subject to appointment or dismissal by the Contractor. Neither is it a fact that any such power or control was ever exercised by the Contractor, under the said Contract.

It also appears, from the said contract, that the Contractor, in part consideration for the performance thereof, agreed to receive from the said Railway Company, a large amount, (to wit, several million dollars) of the Bonds or

debentures of said Company; upon the sale and proceeds of which, he relied chiefly for the means to carry on and complete the work.

It also appears, from the Resolution adopted by the Board of Directors on the 11th August 1875, (see Plaintiff's Exhibit "No. 22") that, by reason of the neglect or failure of the Contractor to negotiate the Bonds above referred to, and his consequent inability to progress with the construction of the Railway, the Railway Company was obliged to declare its inability "*to construct the road under existing arrangements;*" and also to declare its willingness: "*to allow the Government to deal with the question in any way they may, in the public interests, think proper; making such arrangements with the Contractor as may be found necessary.*"

It also appears that, solely in consequence of the above failure on the part of the Contractor, and the subsequent action of the Railway Company in relation thereto, the Provincial Government entered into direct negotiations with the Contractor, with a view of closing an arrangement for the construction of the Railway, upon a basis wholly of *cash payments* therefor, instead of a portion thereof in the Bonds above referred to. (*See Testimony of Hon. J. G. Robertson.*)

It also appears that, pending the above negotiations, between the Government and the Contractor, "*negotiations were kept in abeyance with certain parties, (see testimony of Hon. Thos. McGreevy,*) who, under a previous arrangement between the Plaintiff and the Defendant, "*proposed to assume the position then held by the Defendant for the construction of the North Shore Railway;*" (see Plaintiff's Exhi-

bit "L," being McGreevy's Letter of July 22nd 1875,) and to complete the same, under the then existing contract with the Railway Company.

It was, therefore, under the circumstances above narrated, all of which are fully established by the Defendant's admissions, and the evidence in the case, that the Defendant had communications with the Plaintiff as *General Consulting Engineer*, for his aid and assistance in conducting his negotiations, and in consummating his contract with the Provincial Government. (*See Defendant's answers to Faits et Articles.*)

Viewing the case in the light of these circumstances, it will become quite apparent, that *the Plaintiff had everything to lose*; and that *the Defendant had everything to gain*, by the proposed arrangement with the Government.

The Plaintiff, owing to the lapse of time, and his entire devotion to the interests of this Enterprise, had, to a great extent, severed his professional engagements, and business relations, in the United States; and he was therefore chiefly dependent upon the salary which he received from the Railway Company, for the support of himself and family; which salary would be quite sure to be discontinued, and his services dispensed with, (as in fact they have been) in case the road came under the control of the Government, who had its own Engineer. While on the other hand; if the road remained under the control of the Railway Company; and the parties were brought forward who stood ready to complete the road under the original contract, the Plaintiff's salary as Consulting Engineer, would not only be secured to him; but also any additional advantages which might accrue to him under his previous agreement with the Defendant.

The Defendant had advanced largely from his own means; and, by reason of his failure to negotiate the securities of the Company, he had nearly or quite exhausted both his means and credit, in his efforts to carry on the work under the original contract; and he would therefore soon be compelled, either to abandon the work entirely, and thus lose the money which he had invested in it; or to close the arrangement with the parties referred to in his letter of 22nd July, by which arrangement these parties would, as stated in this letter, *assume the position then held by the Defendant for the construction of the North Shore Railway*, and re-pay to the Defendant the amount of his previous advances in connection with the Contract. While, on the other hand, if a favorable contract could be negotiated with the Provincial Government, the Defendant would not only secure the prompt re-payment of *all past expenditures*; but he would also secure the prospect of *large future profits* in connection with his contract; together with all the advantages growing out of the substitution, as the second parties thereto, of a *responsible Government*, in lieu of an *irresponsible Railway Company*.

These *prospective advantages* had already induced the Defendant to defer the closing of the proposed arrangement with the parties referred to in his letter to the Plaintiff of 22nd July 1875; and the same considerations now induced him to make it for the interest of the Plaintiff, not only to aid the Defendant, in holding "*these parties in abeyance*," until the result of his negotiations with the Government could be determined; but also to aid and assist the Defendant in bringing these negotiations to a speedy and satisfactory conclusion. Or, to use the words

of the Defendant, "*in order that there should be no delays; knowing that the Plaintiff had the means in his power of keeping it back.*" (See admissions by Defendant, clause 14.)

An arrangement was therefore entered into, between the Defendant and the Plaintiff, by which it was proposed, upon the consummation of the contract with the Government, that the Plaintiff should be secured the sum of \$15,000; this being *the precise amount of three years salary as Consulting Engineer, during the probable period of the construction of the Road.*

The following is a copy of the Agreement referred to, and upon which the present action is based :

" Quebec, 18th August, 1875,

Dear Sir : In consideration for your extra services, I hereby agree, that if I close an arrangement with the Provincial Government of Quebec, by which the Government either takes the North Shore Railway contract off my hands, or pays me a cash consideration for performing the contract, I will pay you five thousand dollars upon the closing of such an arrangement ; also five thousand dollars additional, within one year from that date ; and five thousand dollars additional, within two years from that date ; making in all fifteen thousand dollars.

Yours truly,

(Signed,) THOS. MCGREEVY.

GENERAL SEYMOUR,

Consulting Engineer, &c., &c, Quebec."

It also appears, from the evidence in the case, that the Plaintiff not only refrained from using "*the means, (which the Defendant knew he had,) of keeping the negotiations back,*" but that he also furnished information that was of *very great service ; and certainly facilitated matters, and helped to the*

execution of the negotiations which ended in the Contract. (See testimony of Hon. J. G. Robertson, late Provincial Treasurer.)

When all the facts and circumstances above referred to, and connected with the case, are duly considered, it is respectfully submitted, that the consideration mentioned in the above Agreement, provides for no more than a fair and equitable compensation to the Plaintiff, for the *position which he sacrificed*, and the "*extra services*" which he rendered in connection with these negotiations; while, at the same time, the amount named in the Agreement, was not only a direct charge and obligation upon the Defendant, under his former contract with the Railway Company, from the payment of which he would, in all probability, be released if his present Agreement with the Plaintiff should become effective; but it bears no comparison to the other, and for greater benefits and advantages which were then expected to be, and were actually derived by the Defendant, by reason of his subsequent contract with the Provincial Government; all of which were the direct results of said Agreement. And, therefore it appears that the *Equity of the Case* is clearly in favor of the Plaintiff.

LEGAL ASPECT OF THE CASE.

The Defendant has admitted, that he signed the Agreement, dated 18th August 1875, upon which this action is based ; and also, that the "*Arrangement with the Provincial Government of Quebec*," which is referred to in, and made a condition of said Agreement, was duly closed on 24th December 1875. (*See admissions by Defendant, clauses 3, 4, and 6.*)

In remarking upon *the legal aspect of the case*, it is therefore proposed, in the first instance, to consider more especially, *the precise language and terms of the Agreement in question*: and afterwards to consider *the questions at issue*, between the parties, in relation thereto, in connection with the testimony which has been adduced in the case.

The language and terms of the Agreement.

Referring particularly to the full copy of the Agreement in question, as given on a previous page, it would certainly appear, that, if the precise language and terms thereof are intended, by the parties thereto, to mean anything, they amount to a full and unqualified admission, on the part of the Defendant ; 1st. That he, the Defendant, was indebted to the Plaintiff, "*in consideration for his (the Plaintiff's) Extra Services*," in the sum of "*fifteen thousand dollars*;" and 2nd, That he, the Defendant, agrees to pay this amount to the Plaintiff, in such instalments, and at such times as are specified in said Agreement, *upon the sole condition* that he, the Defendant, "*closes an arrangement*

with the Provincial Government of Quebec, by which the Government either takes the North Shore Railway contract off my (the Defendant's) hands; or pays me (the Defendant) a cash consideration for performing the Contract."

The Agreement in question does not state, or even intimate, whether the "*Extra Services*," therein referred to, had already been rendered by the Plaintiff; or whether it was expected that he would render these services, subsequent to the date of the Agreement; or even whether these services had any relation to, or connection with the "closing of the arrangement with the Provincial Government" therein referred to; neither does the Agreement impose any condition, restriction, or other obligation whatsoever upon the Plaintiff, either in relation to the said "*Arrangement with the Government*;" or in relation to the payment of the amount therein specified, and agreed to be paid by the Defendant.

The term: "*In consideration for your Extra Services, I hereby agree*," as used in the Agreement in question, is exactly synonymous with the term: "*For value received, I promise to pay*," as ordinarily used in promissory notes. And it therefore appears quite evident that, if the "arrangement with the Government," referred to in the Agreement, had been consummated by the Defendant, either previous to, or at the date of the Agreement; or, if the date or time of closing the said "*Arrangement with the Government*" could have been definitely foreseen and determined by the parties, at the date of the Agreement; then, and in either of these events, the usual form of *promissory notes*, signed by the Defendant, and made payable at the dates, and for the respective amounts indicated in

the Agreement, would undoubtedly have been adopted by the parties, instead of the form which was actually and necessarily adopted in the Agreement, by reason of the uncertainty as to the time when the arrangement between the Defendant and the Government, therein referred to, would be closed.

It is therefore respectfully submitted, that *Prima facie*, and in view of the above facts and considerations alone, the legality of the Plaintiff's claim against the Defendant, under the said Agreement of 18th August 1875, is clearly established.

The questions at issue, and the Testimony.

A careful analysis of the Plaintiff's Declaration, and the Defendant's Answer in this case, will show, that the Plaintiff distinctly alleges, that the "*Extra Services*," named and referred to in said Agreement, are the services which he, the Plaintiff, in his capacity of "*General Consulting Engineer*," rendered to the Defendant, in connection with the negotiations which resulted in a contract between the Defendant, and the Provincial Government, for the construction of the North Shore Railway, upon the basis of a cash consideration. And also, that it is entirely "*in consideration for these extra services*" that the Defendant is indebted to him, the Plaintiff, for the amount named in said Agreement.

It will also be seen, that the Defendant denies that the Plaintiff rendered any such services; but alleges on the contrary, that the Plaintiff endeavoured to defeat the object of said negotiations. The Defendant also alleges, that the Plaintiff, being the salaried officer of the North Shore Rail-

way Company, at the time, must have rendered such services, if they were rendered, in behalf of the said Company, *and not for the Defendant* ; Also, that, by reason of the Plaintiff's holding such office under the Railway Company, he was *disqualified and prevented* from rendering the Defendant any services in connection with said Railway ; Also, *that by fraud and pretence*, the Plaintiff has already received from the Defendant certain sums of money, which should be allowed as an off-set to the Plaintiff's claim.

The Defendant having, as before stated, admitted the execution and genuineness of the Agreement, upon which this action is based ; Also the fact, that the arrangement with the Provincial Government, therein referred to was closed on the 24th December 1875. And the Defendant having also admitted, that during the negotiations which resulted in said arrangement, or contract, he, the Defendant, had communication, on several occasions, with the Plaintiff, as "*General Consulting Engineer*," (*See admissions by Defendant, clause 5,*) in relation thereto ; it therefore appears that *the only real questions at issue* between the parties, are the following :

1st. Was the legal *Status* of the respective parties to this suit, in their relations to and with each other, on the 18th day of August 1875, such as to *justify the Plaintiff* in rendering the "*Extra Services*," mentioned in the Agreement of that date, which forms the basis of the present action ; and also such as to *justify the Defendant* in signing said Agreement, and thereby placing himself under obligations to pay to the Plaintiff a specific consideration for the performance of such "*Extra Services*?"

2nd. Were the "*Extra Services*" mentioned in the said Agreement, of 18th August 1875, *actually performed* by the Plaintiff, in behalf of the Defendant, either before, at the time of, or subsequent to the date of the said Agreement?

3rd. Are the respective sums, named in the Defendant's Answer in this cause, as having been paid by him to the Plaintiff, entitled to be regarded as *a just and legal set-off* to the Plaintiff's claim against the Defendant, in this action.

Having thus reduced the case to the above *three distinct propositions*, it is proposed to refer to the testimony adduced in this case, in the order of its application, or reference to the foregoing propositions.

1st. As to the legal Status of the Parties.

It appears to have been well established from the testimony, that, prior to May 1st 1875, the Plaintiff had been the Acting Chief Engineer of the Railway Company, and that at the date of the Agreement, the Plaintiff occupied the position of the *Consulting Engineer of the said Company*; and that as such Consulting Engineer he was receiving *from the Company*, a salary of five thousand dollars per annum; which salary, according to the terms of the then existing Contract, was provided to be, and actually was in the first instance, advanced to the Railway Company by the Contractor; and afterwards *refunded to him*, in Monthly estimates, as per Schedule. (*See Testimony for Defence, clauses 12 & 14. Also Plaintiff's Evidence in Rebuttal, clause 5. Also Plaintiff's Exhibits "23," & "24" at Enquete.*)

It also appears that, at the same date, the Plaintiff oc-

cupied an office for business purposes, in the City of Quebec, upon the entrance door to which was affixed the Sign, "*General Consulting Engineer.*" (See admissions by Defendant, clause 22. Also Facts proven by Plaintiff. *see* 4.)

It appears to have been equally well established from the testimony, and the admissions of the Defendant, that at the date of the Agreement, the Defendant *was the Contractor for the construction of the North Shore Railway*, under the said Railway Company; Also, that, at the same date, the Defendant was engaged in negotiations with the Provincial Government of Quebec, with a view of obtaining a contract for building the North Shore Railway, on the basis of a cash consideration. (See admissions by Defendant clauses 1 & 2.)

It also appears that, about a week previous to the date of said Agreement; to wit, on the 11th of August, 1875, the North Shore Railway Company adopted a Resolution, "*declaring the inability of the Company to construct the Road under existing Arrangements*; and that the Company are therefore ready to allow the Government to deal with the question in any way they may in the public interests think proper, *making such arrangements with the Contractor as may be found necessary.*" Also that, after the passage of said Resolution, *the said Railway Company did not take "any step or action whatever with respect to the construction of the said Road*; everything was at a stand-still, waiting for the action of the Government." (See Plaintiff's evidence in rebuttal, clauses 4 & 6. Also Exhibit No. 22.)

It also appears that, previous to the date of said Agreement, and during all said negotiations between the Defendant and the Provincial Government, *the Defendant had*

communications with the Plaintiff as General Consulting Engineer, concerning documents which the Plaintiff stated that the Treasurer of the Province had put into the Plaintiff's hands, to prepare a contract with the Government, and assist the Treasurer in making a contract. (*See admissions by Defendant, clause 5.*)

It also appears that the Defendant *was very desirous* that the preparation of the Contract, Schedules, and Estimates should be put through as soon as possible, and *that there should be no delays*; also, that during these interviews, (to wit, with the Plaintiff as *General Consulting Engineer*) the Defendant signed an Agreement with the Plaintiff, upon which this action is based, "*in order that that there should be no delays; knowing that the Plaintiff had the means in his power of keeping it back;*" also that the Defendant "*would not have signed said Agreement, under any other circumstances.*" (*See admissions by Defendant, clauses 13 & 14.*)

It also appears, that the said negotiations between the Defendant and the Government, were initiated and carried on, for the reason that, *owing to the proposed relinquishing by the Railway Company of its Charter*, it became necessary to have a new contract entered into for the construction of the Road. (*See Plaintiff's evidence in rebuttal, clause 16.*)

It also appears that, previous to the date of said Agreement, the Defendant was desirous of obtaining responsible parties to advance the means in carrying out his original Contract with the Railway Company; and that the Defendant entered into arrangements with the Plaintiff to that effect; also, that the Defendant was aware that the Plaintiff had procured parties who were willing to assume an interest in said contract; also, that the Defendant had

met said parties with the Plaintiff: and had also communicated with said parties, through the Plaintiff, in writing, with a view of closing an arrangement; also that negotiations with said parties *were kept in abeyance*. during the Defendants pending negotiations with the Government. (See admissions by Defendant, clauses 10 & 21. Also Plaintiff's Exhibit " L " at Enquete.)

Having thus stated, with some particularity the respective positions occupied by each party; together with the relations which existed between them; and the circumstances which surrounded the North Shore Railway, at the date of the Agreement in question; it remains to consider, whether there was anything in these relations which rendered it *unjust and illegal*, for the parties to enter into this Agreement; or that should present any bar to its enforcement.

It is well understood, both in and out of the Engineering Profession, that the duties pertaining to the office or position of a *Consulting Engineer*, are, as the term clearly indicates, and as is equally well understood when the terms *Counsel* and *Consulting* are applied to other Professions, entirely of an *advisory*, and not of an *executive* nature; and it is also understood, that the services of a Consulting Engineer are due only to, or in the interest of the party by whom he is appointed; and that these services are due, even to this party, only when the Consulting Engineer is regularly and officially called upon for counsel and advice respecting matters which are legitimately connected with his profession, and in which the party by whom he is appointed has a direct interest.

It does not appear from the evidence, that the Railway

Company ever called upon, or required the Plaintiff to render any service, or to take any part in connection with the negotiations between the Defendant and the Government; or, that either the Defendant or the Government ever requested the Railway Company to require the Plaintiff to furnish any information, or to render any service in connection therewith. On the contrary, *it does appear* from the evidence, that, "after the 11th August, 1875, the Railway Company took no step or action whatever with respect to the construction of the Road." (*See Plaintiff's evidence in rebuttal, clause 6.*)

Such having been the Professional, and consequently the *Legal Status* of the Plaintiff, in his official relations with the Railway Company, at the date of the Agreement in question; therefore, in the absence of any request or instructions from the Railway Company, respecting the pending negotiations between the Defendant and the Provincial Government; and with a full knowledge of the fact that the Company had no interest, and was taking no part whatever in these negotiations, it appears quite evident that the Plaintiff was at full liberty, either to remain entirely passive and neutral in respect of these negotiations; or to take such action in relation to them as would be best calculated to promote his own interests; particularly so long as such action could by no possibility prove contrary to the wishes, or derogatory to the interests of the Railway Company, whose wishes and interests alone, either in this or any other matter connected with the Railway, he was justly bound to look after and protect, so long as he remained the Consulting Engineer of the Railway Company.

It is therefore quite clear, from the premises, that whatever action the Plaintiff might conclude to take, in respect of the negotiations in question, must of necessity be entirely outside of, and disconnected from the duties and services pertaining to his official position as the Consulting Engineer of the Railway Company; and consequently that such services, if rendered in behalf of either of the parties to the negotiations in question, would very properly be regarded as "*Extra Services*."

It has been shown in the preceding remarks upon the "*Equity of the case*," "that the Plaintiff had everything to lose; and that the Defendant had everything to gain by the proposed arrangement with the Government;" for the reason that, by its consummation, the Plaintiff would be quite sure to be deprived of his salary of \$5,000 per year, as the Consulting Engineer of the Company, during the three years that would probably be required to complete the Railway; while, on the other hand, the Defendant would not only be released from the further payment of this salary, and repaid for all his past expenditures under his original contract; but he would also secure the prospect of large future profits in connection with his proposed contract with the Provincial Government.

The Plaintiff had been the Acting Chief Engineer of the Railway, during several years previous to May 1st 1875; and had, during that time, acquired a thorough knowledge of the details and cost of the different works; which knowledge, although it had been acquired previously to the time of the negotiations in question, *and not in the Plaintiff's Capacity of Consulting Engineer*, was likely to prove of very great service to the Defendant, in facilitating his negotiations with the Government.

The member of the Government who was conducting the negotiations with the Defendant, had applied to the Plaintiff for a statement of quantities and kinds of materials which enter into the construction of a Railway, "*because, (to use his own words) he thought the Plaintiff had more information concerning the matter than any one else;*" not, it will be observed, because the Plaintiff was, at the time, the *Consulting Engineer* of the Railway Company; but evidently because it was within the knowledge of the member of the Government, that the Plaintiff had acquired the information sought for, during his long experience as the *Chief Engineer of the Road*.

The Defendant was told by the Plaintiff, that the Treasurer of the Province had called on him (the Plaintiff) to assist him (the Treasurer) in preparing the draft of Contract, Schedules and Estimates; and the Defendant, being very desirous that the thing should be put through as soon as possible, and that there should be no delay, signed an Agreement with the Plaintiff, upon which this action is based, in order that there should be no delays; knowing that the Plaintiff had the means in his power of keeping it back, (*see admissions by Defendant, clauses 12, 13 and 14*); Which Agreement, as will be seen, provides only for an amount equal to a continuation of the Plaintiff's salary of \$5,000 per year, for a term of three years; and thus secures, or was evidently intended to secure the Plaintiff against this loss of income, which otherwise appeared to be inevitable, in the event of a successful termination of the pending negotiations between the Defendant and the Government.

If injustice was done by the Plaintiff to the Railway

Company, by reason of the above Agreement, it would appear that the Company itself would have been the proper party to call him to account therefor, rather than the party in whose favor or interest the Plaintiff is alleged to have committed such act of injustice ; particularly when it is considered that the *official relations* which the Plaintiff sustained towards the Railway Company, were *well understood* by the Defendant, when he signed the Agreement ; notwithstanding which, he did not scruple to avail himself of the benefits of the Plaintiff's *Extra Services*, in connection with his negotiations, and subsequent Contract with the Government.

Referring to the allegations contained in the Defendant's Answer, to the effect, that the services in question were such as pertained to the Plaintiff's Official position as the salaried officer of the Railway Company ; and also, that by continuing to hold said office, the Plaintiff was *disqualified* from rendering the Defendant any services in connection with said Railway, it will be seen from the testimony, given by experienced members of the Engineering profession, that the Defendant had no claim upon the Plaintiff, for services of this nature, in his capacity of the Consulting Engineer of the Railway Company ; and also, that there was *no impropriety* in his rendering such services to the Defendant, *even in his official capacity*, in case he voluntarily inclined to do so. (*See testimony for Defence, clause 28 ; also Plaintiff's evidence in rebuttal, clauses 10, 11 and 12.*) From which it will appear, that, taking the Defendant upon his own assumed ground, there could have been nothing unjust or illegal in the transaction.

When it is considered that the Railway Company, whose

"salaried officer" and *nominal* servant, the Plaintiff was, at the date of the Agreement in question, had become practically *effete*; and that it was taking no part or interest whatever, either "*in the construction of said Road*," or in the *pending negotiations* between the Defendant and the Government; and when it is further considered, that the services referred to in said Agreement, were sought for and required by the Defendant, to use his own words: "*In order that there should be no delays; knowing that the Plaintiff had the means in his power of keeping it back*"; also that the Agreement would not have been signed by the Defendant "*under any other circumstances*"; it will become quite clear, that the term "*Extra services*," as used in said Agreement, was understood by the parties, as referring to certain services of an *extraordinary* nature, that were quite independent, distinct, and separate from the Plaintiff's *ordinary services* as the *Consulting Engineer* of the Railway Company. Or, in other words, that the Plaintiff was expected to lose no time in preparing and furnishing the officer of the Government, with whom the Defendant was then engaged in carrying on his negotiations, with such *extra* information, aid, and assistance, as the said officer required for the purpose of carrying on these negotiations intelligently; and also "*in preparing the draft of Contract, Schedules and Estimates*"; all of which was to be done "*in order that there should be no delays*."

Therefore, in view of all the facts and considerations connected with the case, it is respectfully submitted, that the services referred to in said Agreement, were not contemplated or required to be rendered, by the Plaintiff, for or in behalf of the Railway Company. And also, that there

was nothing contemplated by, or connected therewith, that should prevent the legal consummation, by the parties thereto, of the Agreement dated August 18th 1875.

2d. As to the Extra Services rendered.

Inasmuch as the nature and extent of the services contemplated to be rendered by the Plaintiff, under and by virtue of the Agreement in question, have been fully discussed in the preceding article, it will be unnecessary to renew the discussion here, further than to state generally, that, according to the allegations of the Plaintiff, and the admissions of the Defendant, *these services were to consist on the part of the Plaintiff, in the furnishing of information, and otherwise rendering aid and assistance to the Defendant, and to the Provincial Government, that would be the means of facilitating the negotiations then pending between the parties; and also of hastening the final consummation of a contract between them, for the construction of the North Shore Railway.*

With reference to the performance of the above services on the part of the Plaintiff, it appears from the testimony, that, immediately after the signing of the said Agreement, the Defendant explained to the Plaintiff, that there was a difference of a large amount, say four hundred and fifty thousand dollars, (the Defendant cannot state the exact amount) between the Defendant and the Government, respecting the consideration for the Main Line alone; also that this difference was harmonized, by the terms of the contract being agreed upon, and ready, about the last days of August; (to wit, within a few days after the signing of the Defendant's Agreement with the Plaintiff, of August

18, 1875); also, that the Plaintiff prepared the draft of a contract to be executed by the parties (*See admissions by Defendant, clauses 15, 17 and 18.*)

It also appears that the Plaintiff prepared and placed at the disposal of the Government, and the Defendant, certain important documents; to wit, "*Points to be considered in adjusting the existing contract to a cash basis;*" "*Remarks upon the form of contract, &c.*" "*A statement of quantities and materials;*" together with "*Schedules of relative cash values, &c.*" (*See Facts proven by Plaintiff, clauses 6 and 11; also Plaintiff's Evidence in rebuttal, clauses 18 and 22; also testimony for Defence, clauses 4 and 6. Also Plaintiff's Exhibits at Enquete "A. A." "B. B." and "T."*)

It also appears, that the above information and documents were found to be "*of very great service*"; and that they "*certainly facilitated matters, and helped to the execution of the negotiations which ended in the contract.*" (*See Plaintiff's Evidence in rebuttal, clauses 20 and 21.*)

It also appears, that much of the language, and many of the entire paragraphs, which were embodied in the documents so furnished by the Plaintiff, were subsequently embodied in the contract between the Defendant and the Government; also that many of these clauses and provisions, were exceedingly favorable to the Defendant. (*See Facts proven by Plaintiff, clauses 11 and 12; also "Memorandum, showing the identity or similarity of certain paragraphs, &c."*)

It also appears, by reference to "clause 7," of Plaintiff's Exhibit "T," that the Plaintiff suggested a provision to be embodied in said contract, which would have been much less stringent and binding upon the Contractor, than the

provision, with reference to the same matter, which was subsequently embodied in the contract, in clause 2, at page 115, of Plaintiff's Exhibit "O." (*See Plaintiff's Evidence in rebuttal, clause 13.*)

Also, that two important provisions, which were contained in the original draft of said contract, and which would have been very detrimental to the Defendant's interests, were recommended to be stricken out, by the Plaintiff; and were so stricken out, and not embodied in the contract, as finally executed. (*See Plaintiff's Exhibit "T." clauses 4 and 12, and compare with Existing Contract.*)

It also appears that said contract was ready, about the last days of August, 1875; but that owing solely to the delay of the Government, it was not signed until the following 24th of September. (*See Admissions by Defendant, clause 17.*)

It also appears, that previous to the signing of the said contract by the Defendant, (to wit on the 23rd of September, 1875) the Plaintiff, by letter, called the particular attention of the Defendant to the absence of a most important provision in said contract; which omission was duly provided for "*at the last moment*" before the execution of the contract, when a "*cash consideration* was substituted by the Government, in lieu of the \$125,000 subscribed by the Municipalities;" referred to in the said letter. (*See Admissions by Defendant, clauses 9 and 19; also Plaintiff's Exhibit at Enquete "A."*)

It also appears that, several months subsequent to the negotiations, and the execution of the contract between the Defendant and the Provincial Government, and also of the approval of said contract by the Provincial Legis-

lature, (to wit, during the months of February, April and May 1875,) the Defendant, without protest, or notice to the Plaintiff of his objection thereto, made certain promises and payments to the Plaintiff, on account, (as alleged by the Defendant, in his Answer in this cause) of the consideration named and provided for in said Agreement, of August 18th 1875; which promises and payments, were accompanied by written and verbal assurances, on the part of the Defendant, that further payments would be made on account thereof, at some future day; to wit: that, *near the Montreal Bank, last February, the Defendant stated verbally to the Plaintiff, that he intended to call on Plaintiff, and give him a sum of money, in consideration of the agreement made with the Plaintiff. (See admissions by Defendant, clause 20.)* Also, that on April 17th 1875, the Defendant wrote to Plaintiff, as follows: "*I will call and see you without fail tomorrow.*" Also, that on May 1st 1875, he wrote to Plaintiff again, as follows: "*I was unable to finish your matter today; but will not fail to do so on Wednesday, on my return. I would have sent you the notes, but thought it no use without the cash.*" Also, that on May 4th 1875, he wrote to Plaintiff again, as follows: "*I enclose you two notes for twelve and fifty dollars each, at three and four months, which is all I can do at present at least for a few days, until I get some money.*" (See Plaintiff's Exhibits of said letters.) Thereby admitting, within one month before the commencement of this suit, and several months after the consummation of the arrangement with the Provincial Government, referred to in said Agreement, not only the Defendant's high appreciation of the services rendered by the Plaintiff; but also his obligation to pay to the Plaintiff, the full amount of the consideration specified in said Agreement.

If there had been the least foundation for the allegations contained in the Defendant's Answer ; to the effect, that the Plaintiff's services were performed *in behalf of the Railway Company, and not for the Defendant* ; or, that he had *acted adversely to the Defendant's interests* ; or, that he had used, *fraud and deceit*, in obtaining the above payments from the Defendant ; a sufficient time, had certainly elapsed, previous to said payments, and the commencement of this suit, to have enabled the Defendant to make good these allegations ; but it appears that no evidence whatever has been adduced by him, in relation to these matters ; and they therefore necessarily fall to the ground, at least so far as this suit is concerned.

In view, therefore, of all the foregoing facts and circumstances connected with the case, it appears quite evident that the Plaintiff, in good faith, performed, not only the *Extra services*, referred to in the said Agreement of August 18, 1875, in consideration for which, the Defendant agreed to make certain payments, as therein specified ;— but that the Plaintiff also performed *other important services*, in connection therewith, which enured greatly to the profit and advantage of the Defendant.

3d. As to the payments already made.

The Defendant, in his Answer, alleges that he, the Defendant, paid the sum of two hundred dollars to J. G. Colston, Esq., Advocate, at the request and upon the written order of the Plaintiff.

He also alleges, that the Plaintiff, *through fraud and deceit*, obtained from him his, the Defendant's, two negotiable notes for the sum of twelve hundred dollars each ;

but he produces no evidence to establish either of the above allegations.

The only evidence in the case, which seems to bear upon this question, are the Plaintiff's exhibits at enquete "F." "G." and "H." being letters addressed by the Plaintiff to the Defendant, under the respective dates of May, 2nd, May 4th and May 6th, 1875; in the first of which the Plaintiff states to the Defendant, the terms by which the Agreement of August 18, 1875 may be paid and cancelled, to wit: "*The payment of \$2,300 cash, and the Defendant's note at sixty days for \$1,250, and another for the same amount at ninety days; which, with the \$200 paid to Mr. Colston, will close up the first instalment of \$5,000, due on the 24th December last; also for the other instalments of \$5,000 each, the Defendant's four notes of \$2,500 each, payable respectively Jan. 1, 1877, July 1, 1877, Jan. 1, 1878, and July 1, 1878; all of which notes to be made payable to the Defendant's order.*" In the second of these letters, the Plaintiff acknowledges to have received from the Defendant two notes, similar to those described in the Defendant's allegation. And in the third letter, after referring again to the receipt of the same two notes; and stating that he, the Plaintiff, was quite at a loss to understand the Defendant's motive for sending the notes, the Plaintiff makes the following statements respecting the two notes, and also the amount alleged to have been paid to Mr. Colston; together with a full statement of his account with the Defendant, at that date.

" Upon consulting with my Attorney, however, the same evening; and looking over our previous correspondence respecting my claims against you, as per your Agreements

dated June 21, 1875, and August 18, 1875, respectively, it became quite apparent that you intended me to apply the proceeds of the notes in part payment of the amounts, long past due upon these Agreements; and I therefore took the liberty, on the following morning, of placing the notes in the hands of a Notary, for sale, upon the best possible terms.

" The Notary has just returned me an account of sales, from which it appears that the net proceeds of the notes amount to \$2,150.

" The account between us, as per the Agreements above referred to, exclusive of interest, will therefore now stand as follows :

Per Agreement dated June 21, 1875.

" Amount of <i>bonus</i> due Sept. 24, 1875.....	\$5,000
Balance of salary due monthly from May 1st 1875 to May 1st, 1876.....	\$5,000
Total.....	<u>\$10,000</u>

Per Agreement dated August 18, 1875.

Amount of first instalment, due Dec. 24, 1875.....	\$5,000
Total amount.....	<u>\$15,000</u>
Deduct amount paid Mr. Colston, April 1876.....	\$200
Deduct proceeds of two notes received May 4, 1876.....	\$2,150 \$2,350
Balance due upon both Agreements..	<u><u>\$12,650</u></u>

" You would therefore oblige me by informing me, at

your earliest convenience, as to which of these respective Agreements, you desire, or intended to have me credit the payments which you have already made on their account; so that the amount due under each Agreement may be distinctly understood."

Inasmuch as the Defendant had not furnished the Plaintiff with the information asked for in the above letter, previous to the commencement of the present action; and as he has produced no evidence upon the subject, it is therefore respectfully submitted, that it was evidently the Defendant's intention, that the payments therein referred to, should be credited to the portion of the account therein rendered, which had been longest due to the Plaintiff, to wit, under the Agreement therein referred to, of June 21, 1875.

With reference to the amount of "*Salary as Consulting Engineer*," which the Plaintiff is alleged to have received, between the 1st November and 1st May last, "of the money of the Defendant, paid to him by the Government of this Province" etc., it is sufficient to state; first, that the same provision is contained in the Government contract, with reference to the payment, by the Contractor, of "*All Engineering Expenses*." (except those of the Government Engineer); and his subsequent re-imbursal through the monthly estimates, as was contained in the original contract. (See clause 11, page 117, of Plaintiff's Exhibit "O."); and, second, that any salary so received by the Plaintiff, must have been acknowledged, by the Railway Commissioners, as being justly due the Plaintiff, from the North Shore Railway Company, on account of his *regular services* as the Consulting Engineer of said Company, during the

then current year of his engagement as such; and that the amount was therefore payable by the Contractor (the Defendant) under his contract with the Government: (See *Plaintiff's Exhibit "O."*—clause 21, page 119.)

Attention is also called, in this connection, to the allegation contained in the latter portion of the "*Defendant's Answer*," to the effect, that the Plaintiff was not entitled to, and did not earn his salary as Consulting Engineer, between 1st Nov., 1875 and 1st May, 1876, "inasmuch as the said Plaintiff *did not render the said Defendant any services*, and was not in his employ during the said time"; from which it appears that this portion of the Defendant's Answer is in *direct contradiction* to the theory advanced by him in a previous allegation contained in the same Answer: where the Defendant alleges, in substance, that *the Plaintiff was disqualified* from rendering the Defendant any services, by reason of his being the *salaried officer* of the Railway Company.

It becomes quite evident, therefore, that this alleged payment to the Plaintiff, on account of salary for his *regular services* as the Consulting Engineer of the Railway Company, of which however there is no proof, has no reference to, or connection whatever with, the "*Extra Services*" rendered, or to be rendered to the Defendant, under and by virtue of the Agreement of August 18th, 1875.

In view of all the facts in the case, it is therefore respectfully submitted, that the Defendant has no just and legal off-set to the demand of the Plaintiff, as contained in his, the Plaintiff's Declaration in this case.

CONCLUSION.

It appears, from the foregoing review of the case, that the following facts in relation thereto, have been clearly established :

1st. That the *Equity of the case* is clearly in favor of the Plaintiff.

2nd. That, by the *language and terms* of the Agreement of August 18th 1875, the *Legal aspect of the case* is *prima facie* in favor of the Plaintiff.

3rd. That the *legal status* of the Plaintiff, in his relations to and with the Railway Company, and the Defendant, were such as to justify him fully in rendering the "*Extra services*" referred to in said Agreement, and in receiving a *specific consideration* therefor.

4th. That these *Extra Services* were not only promptly, and in good faith, performed by the Plaintiff, in behalf of the Defendant; but he also performed other services in connection therewith, which enured greatly to the profit and advantage of the Defendant.

5th. That the *payments* alleged to have been made by the Defendant to the Plaintiff, do not appear to have been intended by the Defendant, nor acknowledged by the Plaintiff, as applying to the consideration specified in the Agreement of August 18th 1875. And therefore these payments cannot justly be regarded as a legal set-off in this action.

6th. That *every allegation* contained in the Plaintiff's Declaration, has been *fully corroborated* by the admissions of the Defendant, and the testimony in the case; while *not a*

single allegation contained in the Defendant's Answer, is sustained by the evidence, except the one which charges the Plaintiff with having been the "*Salaried Officer* of the North Shore Railway Company," which fact is freely admitted by the Plaintiff; and must have been well known to the Defendant, both at the time of signing the Agreement in question, and during all the time when he was receiving the full benefits of the arrangement therein provided for.

7th. That the Defendant, having alleged, that the Plaintiff *acted adversely to, and opposed the Defendant's interests, wishes, and desires in the matter*; and also that the Plaintiff obtained the Defendant's *money and notes by means of deceit, pretence, and concealment*; and having offered no proof, and produced no evidence in support of these allegations against the honesty and good name of the Plaintiff, has not only virtually admitted the untruthful and fictitious nature of his entire defence in this case; but he has also shown a degree of *malice* towards the Plaintiff; as well as a *disregard* for his own legal obligations, which deserve the *censure* of the Court.

It is therefore respectfully submitted, in conclusion, that in view of all the facts and considerations connected with the case, the Plaintiff is both *equitably* and *legally* entitled to a judgment against the Defendant, for the sum of five thousand dollars, with interest and costs.

TASCHEREAU AND FORTIER,

Attorneys for Plaintiff.

R. ALLEYN,

Counsel.

Quebec, December, 7th 1876.

JUDGMENT OF THE COURT

COPY OF JUDGMENT RENDERED BY THE

HONORABLE ANDREW STUART,

JUSTICE OF THE SUPERIOR COURT, ON 7TH FEBRUARY 1877.

Considering that the Defendant hath failed to prove the allegations of his plea of *Perpetual Exception*, in this cause filed, the same is hence dismissed.

Considering that the Plaintiff hath proved the material allegations of his Declaration; and more particularly, that the Defendant, if he closed an Agreement with the Provincial Government of Quebec, by which the Government either took the North Shore Railway Contract off his hands; or paid him a cash consideration for performing the Contract; in consideration of the Plaintiff's Extra Services, agreed to pay the Plaintiff five thousand dollars upon the closing of such an arrangement; also five thousand dollars additional, within one year from that date; and five thousand dollars additional, within two years from that date; making in all fifteen thousand dollars:

Considering that the Defendant has closed an arrangement with the said Government, by which it pays the Defendant a cash consideration for performing the North Shore Railway Contract:

The Court doth adjudge and condemn the Defendant, for the considerations aforesaid, to pay to the Plaintiff the sum of *Five thousand dollars, with interest and costs.*

BIBLIOTHÈQUE
SAINT-SULPICE